

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

Revision of the Commission's Rules to Ensure)
Compatibility with Enhanced 911 Emergency)
Calling Systems)

CC Docket No. 94-102

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

BELLSOUTH REPLY

BellSouth Corporation ("BellSouth"), by its attorneys, hereby responds to the oppositions and comments submitted in response to its petition for reconsideration of the Commission's *Memorandum Opinion and Order*, CC Docket No. 94-102, FCC 97-402 (Dec. 23, 1997), 63 Fed. Reg. 2631 (Jan. 16, 1998) (*Reconsideration Order*). The record reveals that BellSouth's proposal that the Commission permit Commercial Mobile Radio Service ("CMRS") providers to file limited federal tariffs received near unanimous support among the parties who commented on the issue. However, some parties have objected to BellSouth's related proposal that wireless carriers not be required to provide wireless E-911 in a state until that state has in place a statutory limitation of liability.¹ BellSouth responds to these concerns below.

DISCUSSION

All but two of the parties addressing BellSouth's proposal to allow the filing of limited federal tariffs supported the BellSouth proposal.² Only the State of Hawaii and the Ad Hoc Alliance

¹ See BellSouth Corporation Petition for Reconsideration at 3-7 ("BellSouth Petition").

² See Rural Telecommunications Group ("RTG") Comments at 5; PrimeCo Personal Communications, L.P. ("PrimeCo") Comments at 1-3; TruePosition, Inc. Comments at 4-5; National Emergency Number Association Comments at 8; KSI Inc. ("KSI") Comments at 2-3. Other commenters did not address this aspect of BellSouth's proposal.

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expressed concern with the proposal, arguing that BellSouth simply restates previously rejected arguments and presents no new grounds requiring the Commission to modify its position.³ To the contrary, BellSouth's proposal represents a novel approach based not only upon new facts that occurred after the close of the reconsideration pleading cycle, but also upon changed circumstances.

First, the Commission issued its *Permissive Detariffing Order* establishing the precedent of allowing carriers to file tariffs in services that were otherwise detariffed for the limited purpose of setting forth terms and conditions for serving users with whom they have no privity of contract.⁴ The *Permissive Detariffing Order* was issued after the previous reconsideration pleading cycle in this proceeding ended. Before that decision, the Commission had not created any exceptions to its detariffing policies. Accordingly, using limited-purpose tariffs as a solution to the problem of limiting E-911 liability with respect to non-subscribers had not been a viable alternative.

Second, the Commission's *Reconsideration Order* recognized for the first time wireless carriers' legitimate concerns regarding insulating themselves from liability when non-subscribers use their systems, stating that "it would appear reasonable for a carrier to attempt to make the use of its network by a non-subscriber subject to the carrier's terms and conditions for liability."⁵ Despite this change in position, however, the Commission did not spell out a solution, apparently because of its desire to avoid a federal mandate that would preempt state law, even though its

³ State of Hawaii Opposition at 7-9; Ad Hoc Alliance for Public Access to 911 ("Ad Hoc Alliance") Opposition at 3-5, 12. The Ad Hoc Alliance originally filed a three-day motion for extension of time on March 18, the day its opposition was due. Such a motion was required to have been filed seven days before the filing date, and therefore was out of time. See 47 C.F.R. § 1.46. The Alliance thereafter filed its opposition *four* business days after the period for filing had expired.

⁴ See *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act, as amended*, CC Docket No. 96-61, *Order on Reconsideration*, 12 F.C.C.R. 15014, 15026-36 (1997) (*Permissive Detariffing Order*).

⁵ *Reconsideration Order* at ¶ 140.

Permissive Detariffing Order provided that solution.⁶ In light of these unique circumstances, BellSouth proposed the filing of limited-purpose tariffs as a balanced solution to the Commission's dilemma. By adopting BellSouth's proposal, the Commission avoids having to establish a federal mandate while providing a vehicle for wireless carriers to establish the terms and conditions of service for non-subscribers.

BellSouth disagrees with the Ad Hoc Alliance's suggestion that wireless carriers should not be permitted to file tariffs to limit their liability in the same manner as local exchange carriers ("LECs") are able to do, unless the wireless carriers are willing to be regulated like LECs.⁷ The differences in regulatory treatment between LEC and CMRS carriers are irrelevant to the issue of tariff filings.⁸ Nondominant interexchange carriers ("IXCs") have been allowed to establish terms and conditions of service through permissive detariffing for callers with whom they have no contract.⁹ Similarly situated wireless carriers should be permitted to do likewise to meet the federally-mandated requirement that they provide E-911 service to non-subscribers.

There was some misunderstanding regarding the second aspect of BellSouth's proposal, which asked the Commission to amend Section 20.18 to "make clear that wireless providers are not obligated to provide E-911 within a state until the state limits the liability of wireless providers regarding the provision of E-911 service."¹⁰ For example, the Texas Advisory Commission on State Emergency Communications seemed concerned that BellSouth's suggestion, in some way, will override or conflict with state liability legislation.¹¹ To the contrary, BellSouth stated in its petition

⁶ See *Reconsideration Order* at ¶ 140.

⁷ See Ad Hoc Alliance Opposition at 6-12.

⁸ Ironically, CMRS carriers *are*, in effect, being regulated similarly to LECs with respect to the provision of E-911 service, as the Ad Hoc Alliance has urged.

⁹ See *Permissive Detariffing Order*, 12 F.C.C.R. at 15034-36.

¹⁰ BellSouth Petition at 7.

¹¹ See Texas Advisory Commission on State Emergency Communications Comments at 4.

that its suggestion would “permit each state to limit liability in the manner it deems appropriate.”¹²

To the extent the State of Texas has recently enacted liability for protection for wireless carriers, except in cases of gross negligence, BellSouth applauds the State’s efforts. By filing its petition for reconsideration, BellSouth is merely seeking limits on liability commensurate with those enacted by Texas in states that have not passed limited liability legislation of their own.

Other parties attempted to miscast the second aspect of BellSouth’s proposal as an inappropriate attempt to defer the effectiveness of the E-911 rules.¹³ BellSouth’s purpose in filing its petition for reconsideration is not to delay implementation of E-911. It is simply an effort to seek the same level of protection that other entities, including LECs and Public Safety Answering Points (“PSAPs”), already have with regard to the provision of E-911 service. Under the current paradigm, both LECs and PSAPs generally have protections from liability in the form of tariffs and state statutes. In many states, wireless carriers do not have similar protection. This disparity could lead to unjust results. For example, in a state without wireless liability limitations, if a wireline caller and a wireless caller both dial 911 at the same time and neither call is completed, with adverse safety consequences to both callers, the wireless caller might have a cause of action against its carrier while the wireline caller would not have a cause of action. Consequently, the FCC should adopt BellSouth’s recommendations in order to promote parity, not disparity, among the various entities in the 911 service arena.

As it stands now, the Commission has placed CMRS providers in an “untenable and unlawful ‘Catch 22’ situation” by requiring them to serve subscribers and non-subscribers alike, while


¹² BellSouth Petition at 7.

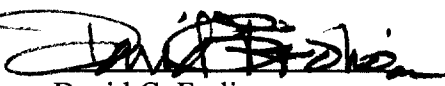
¹³ See, e.g., XYPOINT Corporation Comments at 2; KSI Comments at 3; Ad Hoc Alliance Opposition at 13-14.

stopping short of taking action that would give CMRS providers the means to limit their liability.¹⁴ BellSouth thus agrees with other commenters that the Commission's *Reconsideration Order* fails to provide CMRS providers with the same liability protections afforded to other carriers and PSAPs.¹⁵ To resolve this situation, BellSouth asks only for equal treatment, not special treatment.

Respectfully submitted,

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¹⁴ Bell Atlantic Mobile, Inc. ("BAM") Comments at 1-2; *see also* RTG Comments at 4 ("By expressly recognizing on the one hand that CMRS providers have a legitimate 'concern over potential to liability in the provision of 911 services,' and then overtly refusing to assist in the lessening of the potential for harm, the Commission is essentially ordering CMRS carriers out to sea without life jackets.") (quoting *Reconsideration Order* at ¶ 139) (footnote omitted).

¹⁵ *See* Cellular Telecommunications Industry Association Petition for Reconsideration and Clarification at 12; BAM Comments at 1-2; PrimeCo Comments at 2.

CERTIFICATE OF SERVICE

I, Brooke Wilding, hereby certify that on this 1st day of April, 1998, copies of the foregoing "Reply Comments" in CC Docket No. 94-102 were served via first class United States mail, postage prepaid, on the following:

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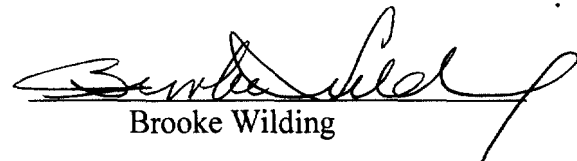
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